VOLUNTEER PROTECTION ACT/Cloture, motion to proceed (1st attempt)

SUBJECT: **Volunteer Protection Act of 1997 . . . S. 543. Smith of New Hampshire motion to close debate on the motion to proceed.**

ACTION: CLOTURE MOTION REJECTED, 53-46

SYNOPSIS: S. 543, the Volunteer Protection Act of 1997, will reform liability laws to provide protection from lawsuits based on the negligence of volunteers.

On April 25, 1997, Senator Smith of New Hampshire moved to close debate on the motion to proceed to S. 543.

NOTE: The motion to close debate requires a three-fifths majority (60) vote to succeed. The Senate failed a second time to close debate on the motion to proceed (see vote No. 53). After the second vote, the Senate agreed by unanimous consent to proceed to the consideration of S. 543 (see vote No. 55).

Those favoring the motion to close debate contended:

America has a vast interstate network of 114,000 operating nonprofit organizations, ranging from schools to hospitals to clinics to food programs. This network's revenues totaled $388 billion in 1990. Total revenues for nonprofit organizations, their support institutions, and religious congregations were $465 billion in 1990. According to a 1993 report from the Independent Sector (a national coalition of 800 organizations), Americans donated 9.3 billion hours of their time to nonprofit organizations that year, which is the equivalent of 5.7 million full time volunteers; that time was worth $112 billion. Unfortunately, according to that same report, the percentage of Americans volunteering dropped from 54 percent in 1989 to 48 percent in 1993. We do not know all the reasons behind that drop, but we know for certain that the fear of being sued played a large part, and continues to discourage people from volunteering. In a recent Gallup survey of nonprofit volunteers, one in six volunteers reported withholding their services for fear of being sued. About 1 in 10 nonprofit groups reported the resignation of a volunteer over the threat of liability. About 1 in 7 of those

(See other side)

YEAS (53)

Republicans (53 or 98%)		Democrats (0 or 0%)
Abraham	Hutchinson	
Allard	Hutchison	
Ashcroft	Inhofe	
Bennett	Jeffords	
Brownback	Kempthorne	
Burns	Kyl	
Campbell	Lott	
Chafee	Lugar	
Coats	Mack	
Cochran	McCain	
Collins	McConnell	
Coverdell	Murkowski	
Craig	Nickles	
D'Amato	Roberts	
DeWine	Roth	
Domenici	Santorum	
Enzi	Sessions	
Faircloth	Smith, Bob	
Frist	Smith, Gordon	
Gorton	Snowe	
Gramm	Specter	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thompson	
Hagel	Thurmond	
Hatch	Warner	
Helms		

NAYS (46)

Republicans (1 or 2%)	Democrats (45 or 100%)	
Shelby	Akaka	Johnson
	Baucus	Kennedy
	Biden	Kerrey
	Bingaman	Kerry
	Boxer	Kohl
	Breaux	Landrieu
	Bryan	Lautenberg
	Bumpers	Leahy
	Byrd	Levin
	Cleland	Lieberman
	Conrad	Mikulski
	Daschle	Moseley-Braun
	Dodd	Moynihan
	Dorgan	Murray
	Durbin	Reed
	Feingold	Reid
	Feinstein	Robb
	Ford	Rockefeller
	Glenn	Sarbanes
	Graham	Torricelli
	Harkin	Wellstone
	Hollings	Wyden
	Inouye	

NOT VOTING (1)

Republicans (1)	Democrats (0)
Bond-[2]	

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

groups eliminated one or more of their valuable programs in order to limit their exposure to lawsuits. Eighteen percent of those surveyed said they had withheld their leadership services due to fear of liability.

That fear is not baseless. For most of America's history, the doctrine of charitable immunity was followed. Charities were held totally immune if they made honest mistakes that caused physical, monetary, emotional, or other injuries. In the 1980s that doctrine evaporated. Volunteers are now sued for injuries that they would never have been liable for in the past, and that we do not believe they should be held liable for now. Little League has been a favorite target. In one case, two youngsters collided in the outfield and then sued their coach. In another case, a woman won a cash settlement when she was struck by a ball that a player had failed to catch. Incidentally, that player was her own daughter. An umpire in New Jersey was forced by a court to pay a catcher $24,000 because the catcher was hit in the eye by a softball, and the umpire had not lent him his mask. The anecdotes go across the gamut of charitable organizations and activities. In one case, a Chicago jury awarded $12 million to a boy who was injured in a car crash. The party who was deemed to be negligent was the volunteer who had lost his life attempting to save the boy. In another case, the receptionist at a youth club was sued when a program participant was injured lifting weights. The club was not sued, nor was anyone else present because they did not have as much money as the receptionist. The cases go on and on. Our colleagues tell us that we are only giving them anecdotes; they do not know exactly how many cases are being brought, so they say that there is no evidence of a flood of litigation. Our colleagues are wrong. They are ignoring an overwhelming amount of evidence. Though we cannot give them the exact numbers of suits, because charities are understandably reluctant to publicize when they are sued, the fact that suits and judgments are rising is clearly visible in the insurance rates that charitable organizations must pay. Insurance companies set premiums according to the risks. It does not take a rocket scientist to understand that the risk of lawsuits for charities has grown when the American Society of Association Executives says that charities insurance premiums have gone up an average of 150 percent in just the past few years. When virtually every nonprofit organization endorses this legislation, when the Red Cross says it is afraid to work with other charities because of the threat of suits, when the United Way says that volunteers are becoming impersonal, reserved, and bureaucratized for fear of being sued, when we know of countless cases like the women's shelter that could not be opened because no company would give it insurance until it had been in operation for at least 3 years, when the executive director of the Girl Scout Council of Washington, DC, says that 87,000 boxes of Girl Scout cookies must be sold locally each year just to pay liability insurance, and when so many people report that they will not volunteer or serve on charitable boards because of the risk of being sued, there is obviously a very large problem. Remember the numbers we gave at the outset of this debate--the more than 10 percent decline in volunteering has already stopped tens of billions of dollars in charitable activities.

President Clinton, former Presidents, former-Chairman of the Joint Chiefs of Staff Powell, and numerous other American leaders are currently gathered in Philadelphia for the purpose of encouraging Americans to volunteer. They understand the problem, and they are rightly publicizing it. However, publicizing it is not enough. Those Americans who are already volunteering are taking a big chance. They may not get sued, but they are in a legal lottery that may cost them their savings, their possessions, and their homes. The fact that so many people still volunteer shows that Americans are not only a very generous people, but also a very brave people. The current tort system brings new meaning to the saying that charity begins at home; to protect their families, many Americans no longer dare to help others.

Those Senators who have said that we are taking advantage of the fact that a summit on voluntarism is being held are correct. Our colleagues seem to think that it is terrible that we are trying to pass legislation that will actually do something concrete to help volunteers while the country's attention is focused on the issue; we do not. The battle to pass liability relief for volunteers has been going on for at least a dozen years. For a dozen years, the American Trial Lawyers Association has bitterly opposed any reforms. Trial lawyers give tremendous sums of money to Democratic candidates for office, and many Democrats have been elected who share the trial lawyers' opposition to reform (albeit quietly, because the public wants to stop these unjust suits). For 12 years, the issue has received little attention, and bills to protect volunteers have been blocked. Now that the public's attention is focused on the issue, though, we have a chance of passing a bill. This bill is being filibustered at present, but we are not certain that our Democratic colleagues are willing to continue indefinitely. It is one thing to kill popular bills in committees; it is quite another to kill them by openly blocking their consideration on the Senate floor. There is no doubt that this bill is popular and needed--it is basically America against the trial lawyers.

The main argument on the merits of S. 543 that has been raised is one of the most offensive, baseless arguments that we have ever heard made in Congress. That argument, which was advanced by the senior Senator from Vermont, is that S. 543 should be called the "Ku Klux Klan Protection Act" because, he alleges, it is as good an example of a nonprofit, volunteer organization as any. S. 543 is not a long document--just a few pages. We have no doubt our colleague has read it, and we have no doubt that he has therefore read the provisions that will prevent it from applying to the Ku Klux Klan and similar hate groups. Being a nonprofit organization is not enough--this bill is specifically limited to apply only to organizations that are organized for the public benefit and operated for charitable, civic, educational, religious, welfare, or health purposes. No jury anywhere in America will ever apply such a description to a hate group. If this point is not clear enough to our colleague, we urge him to note that the bill, among other restrictions, specifically does not apply to any misconduct: that is a crime of violence; that is a crime of terrorism; that is a hate crime; or that violates a Federal or State civil rights law. The Ku Klux Klan is a violent, terrorist, racist organization that consistently

violates civil rights laws; therefore, no legitimate claim can be made that S. 543 applies to it, and it is highly offensive to suggest otherwise. Our colleague has ever so graciously admitted that we of course do not intend to protect the Ku Klux Klan; he has said that we just reached that unintended result because we did not spend enough time drafting the bill. In response, 12 years is long enough to study the issue. The language of this very short bill is well understood by all Senators. It does not exactly match the House language, but the Senate is not nor should it be a rubber stamp for the House.

Another argument our colleague has made is that this issue should be left to the States. However, volunteer liability is a national problem that demands a national solution. Organizations like the United Way, the Boy Scouts, the Red Cross, the Knights of Columbus, the Optimists, and Big Brothers and Big Sisters are national or even international organizations. With the current patchwork of laws and court decisions on liability across the country, it is becoming increasingly difficult for them to operate and recruit volunteers. Most of the large organizations now report that they are less willing to associate themselves with local charitable groups because of liability fears, and many of them report that they have closed down programs entirely. We need look no further than the current floods in the North to see how this issue crosses State boundaries; volunteers from every State in the Union have gone to help, and material assistance is flowing from around the country as well. At present, 44 States have some laws to protect volunteers from negligence suits, but those laws were mainly reactions to poor court decisions, and they do not have any consistency because the decisions they were correcting were not the same. Further, it should be noted that in half of those 44 States the protections are only for the people who serve on charitable boards; the actual volunteers on the frontlines are still risking everything.

In one respect we must compliment our colleague from Vermont: at least he has argued the bill on its merits. Other Senators who have joined the filibuster against S. 543 have spent their time talking about two other items, which, although they are related to each other, have nothing to do with this bill. Those items are the Alexis Herman nomination and the President's proposed Executive Order that will require the Federal Government to use only unionized workers on its construction projects. Alexis Herman has been nominated to be the Secretary of Labor, and in that role she will be called on to advise the National Labor Relations Board in its efforts to resolve the inevitable disputes that will arise if President Clinton actually issues his proposed Executive Order. If the President issues that order, he will be breaking the law because it violates the National Labor Relations Act, and he will be violating the Constitution because Congress, not he, writes the law. Republican Senators are not willing to confirm Alexis Herman until President Clinton agrees he will not issue this order, because they are not willing to put in place a Cabinet official who will be responsible for implementing an illegal, unconstitutional order. In retaliation, some Democrats whom we believe are otherwise supportive of this legislation have joined the filibuster against it. They are holding this unrelated bill hostage, and have spent most of their time talking about labor law and the Herman nomination. Negotiations are currently underway with the White House, and we are hopeful they will be successful. If they are, we think the filibuster will collapse.

We are not underestimating the strength of the trial lawyers lobby. Last Congress, for example, the junior Senator from Pennsylvania pushed for two years to get the Emerson bill passed, which gives legal protection to people who give food to homeless and starving people. It did not pass until the waning days of the Congress, and it only passed after it was made clear to Senators who had holds on the bill that they would be named publicly if they did not drop their opposition. The Emerson bill has been in law for only 2 months, but already food banks have reported that their donations are up sharply. We think that the legal reforms in this bill will show similarly quick results. S. 543 will give much needed relief to volunteers who give their time and money to help others. We urge our colleagues to stop their filibuster.

Those opposing the motion to invoke cloture contended:

Argument 1:

S. 543 should be called the Ku Klux Klan Protection Act. It will give broad, sweeping immunities to virtually anyone or any nonprofit organization for injuries that they cause, no matter how severe those injuries may be. The problem is that the bill will protect any nonprofit organization that is "conducted for public benefit" and operated primarily for charitable, civic, educational, religious, welfare, or health purposes. Neither we nor our colleagues, as a value judgment, believe that the Ku Klux Klan will fall under any of these descriptions, but its members certainly will. When we start making value judgments, saying this group is helpful, or educational, or religious, or patriotic, and that this other group just does not measure up, we are on a very slippery slope. Some judges and some juries will not get on that slope, and the Ku Klux Klan and similar organizations will get away from lawsuits.

Our colleagues do not intend this result, but this is the type of thing that happens when the normal legislative process is skirted. Congress has committees, holds hearings, and generally follows an extremely slow, deliberative process in order to avoid making errors in haste. Unfortunately, the current majority in Congress seem less interested in policy than they are in headlines. Just a week ago, they brought a huge bill to the floor that made major changes to United States policies on chemical weapons. Amazingly, that bill, which few Senators had a chance to read and which never went through a minute of hearings, was intended as an alternative to a treaty that had been negotiated and debated for more than a decade. In this case, our colleagues have advanced this bill because they want to hog a little bit of the limelight that is falling on the bipartisan conference on voluntarism being held in Philadelphia.

Unlike that conference, though, no attempt has been made at bipartisanship here in the Senate. This bill was drafted and advanced without Democratic input.

If our colleagues really want to pass responsible legislation, they should discard this bill in favor of the Porter bill in the House. That bill, at least, has bipartisan support, has had hearings, and has in fact been crafted over several Congresses. We stand ready to work with our colleagues if they want to come up with a bipartisan solution, but until they give us an indication that they are ready to stop grandstanding and to start working, we will oppose closing debate.

Argument 2:

S. 543 is a good bill. Alexis Herman is a good nominee. The President is well within his rights to issue his proposed Executive Order. Our colleagues are wrong for holding up Alexis Herman's confirmation because of the proposed order. She deserves to be confirmed. We will not support passage of this bill or any other bill until we get the matter of this nomination settled. Therefore, we oppose the motion to close debate on the motion to proceed.